

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5671**

**PETITION OF GORDON AND PATRICIA CAUDILL**

(Hearing held November 7, 2001)

**OPINION OF THE BOARD**

(Effective date of Opinion, January 31, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioners propose to construct a one-story addition that requires a fifteen (15) foot variance as it is within two (2) feet of the side lot line. The required setback is seventeen (17) feet.

Terry Cook, architect, appeared at the public hearing with the petitioners. Susan W. Carter, Esquire, appeared for Mr. and Mrs. Mason, adjoining neighbors on Lot 13.

The subject property is Lot 12, Block G, Quaint Acres Subdivision, located at 20 Apple Grove Road, Silver Spring, Maryland, in the RE-1 Zone (Tax Account No. 00304386).

Decision of the Board: Requested variance **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 26.8 x 40 foot one-story addition in the western side yard.
2. Mr. Cook testified that the property has a steep slope at the front of the lot, with the residence sited at the top of the slope. Mr. Cook testified that the residence is sited perpendicular on the lot and not parallel to the road, which is different than the homes in the subdivision.
3. Mr. Cook testified that the addition could not be built in the eastern side yard because of the severe slope in this area and that an addition built in the eastern side yard would not provide accessibility to the living space of the residence. Mr. Cook testified that the addition could not be located elsewhere on the property.
4. Mr. Cook testified that the view of the proposed addition would essentially be the same because the new structure would be built of the same materials as the residence, and would have the same roofline as the house.
5. In response to questions from Ms. Carter, Mr. Cook stated that the garage was greater in depth than the typical garage, but not in width. Mr. Cook stated that the

additional space would be used by the homeowners for storage and that the addition, as proposed, would be two feet from the property line with a two foot roof overhang.

6. Ms. Carter entered Exhibit Nos. 15-19 into the record. Ms. Carter stated that the lots in the neighborhood were all steeply sloped and that several lots had severe slopes as shown on Exhibit No. 17(c) for Lots 17 and 18.
7. In response to questions from Ms. Carter, Mr. Cook stated that the addition could not be located in the rear yard because the addition would have to be built at a lower level and that an addition in the eastern side yard would eliminate the main entrance to the residence.
8. Ms. Mason stated that the topography of the neighborhood is made up of rolling hills. Ms. Mason stated that the addition would adjoin her property in an area that is mostly grass and overlooks their patio and pool area. Ms. Mason stated that this area is regularly used by the family in the summertime. See, Exhibit Nos. 19(a)-19(c).
9. In response to questions from the Board, Ms. Mason stated that the difference in the grade between the two properties where the addition would be sited is about 5 feet and that the close proximity of the addition to the common property lines would be detrimental to the use and enjoyment of her property.
10. Ms. Mason stated that some of the neighborhood properties have garages and others have carports and the proposed addition would be larger than the typical garages in the neighborhood as shown on Exhibit Nos. 15(a)-15(d). Ms. Mason further stated that she was concerned about possible noise from an addition so close to the property line.
11. Ms. Carter stated that the petitioners' property was not unique in comparison to other properties in the neighborhood and that the zoning for the neighborhood provides ample distance between homes to permit a buffer between the lots.
12. A letter of opposition from the Quaint Acres Community Association was entered in the record as Exhibit No. 11.

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a), (b) and (d) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioners' lot has no peculiar topographical or other conditions that are not shared by the neighboring properties. The Board further finds that the conditions of the lot do not limit construction in other areas of the property.

The Board notes that the regulations require the Board to only consider the conditions of the land and not the improvements made to the land.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions*

The Board finds that the construction of a 40-foot wall, two feet from the property line, is not a structure typically found in a subdivision and that the addition, as proposed, is not the minimum reasonably necessary.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the addition would be a massive structure sited close to the common property lines and would be detrimental to the use and enjoyment of the neighboring property.

The petition does not meet the requirements set forth in Section 59-G-1.3(a), (b) and (d) for the grant of a variance. Accordingly, the requested variance of fifteen (15) feet from the required seventeen (17) foot side lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 31st day of January, 2002.

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Katherine Freeman  
Executive Secretary to the Board  
NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.